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WILLIAM J. BRYAN, EDITOR AND PROPRIETOR

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"Packing the Supreme Court" —A Reminder of 1908

During the closing days of the presidential campaign of 1908 the American people heard considerable about "packing the supreme court." These things are particularly interesting at this time.

The Wall Street Journal, morning edition, October 15, 1908, page 1, under the heading of "Business and the Election," speaking of the possibility of the election of Mr. Bryan and what might follow, said:

"He (Mr. Bryan) would, for instance, have the appointment of three or four members of the supreme court and through his secretary of the treasury he could, if he chose, work much havoc to the financial markets."

The Wall Street Journal, morning edition, October 22, 1908, page 2, under the heading of "Roosevelt on Court Injunctions," said:

"President Roosevelt declares that the Bryan and Gompers remedy is 'an empty show' inasmuch as it would be unconstitutional. Mr. Roosevelt says: 'Such a law as that proposed by Mr. Bryan would, if enacted by congress, be declared unconstitutional by a unanimous supreme court, unless, indeed, Mr. Bryan were able to pack this court with men appointed for the special purpose of declaring such a law constitutional.'"

The Wall Street Journal, Saturday October 24, 1908, page 1, under the heading, "Coming Changes in the Supreme Court," after giving the names and ages of the members of the court, said:

"The personnel of the federal court of last resort will almost inevitably undergo important changes under the regime of the president to be elected on November 3. Of course a republican senate will have a veto power over bad appointments, but democratic victories this year and two years hence might whittle the existing majority of thirty down to a dangerously narrow margin."

The Wall Street Journal, Monday, November 2, 1908, page 1, in column, "Review and Outlook," under the heading, "A Measure of His Power," said:

"If Mr. Bryan were elected president he would have the power of appointment—and would exercise it—of nine members of the cabinet, three or four members of the supreme court, as well as a number of circuit and district court judges, ten ambassadors, twenty-seven ministers, upwards of a hundred district attorneys, many collectors of customs, and internal revenue, the postmasters of the principal cities, and last, but by no means, the least, of several members of the interstate commerce commission. As the kind of law we live under depends in a measure upon the way it is interpreted and enforced, it follows how great the power Mr. Bryan would possess, practically independent of congress, to put his ideas into practice."

At any rate "his ideas" would not have been in line with a policy that would permit "undue" burglary or "unreasonable" embezzlement.

A Friend in Error

The Springfield (Mass.) Republican is so fair in its treatment of public men and of its journalistic contemporaries that its errors must be assumed to be unintentional. It comments as follows upon The Commoner's editorial criticism of the supreme court's decision in the Standard Oil case:

"Mr. Bryan's comments, through his Com-

moner, on the oil trust decision are highly critical and go so far as to intimate that recent appointments to the supreme bench have been made with an eye to bringing about such a judgment. This is very bad. He says that the court is building 'a bulwark around the predatory corporations'—and this in face of the fact that the court has been smashing two of the most conspicuous corporations of the kind to the best of its ability. He commends the position of Justice Harlan, who would apparently interpret the law as searching enough and strong enough to hunt out and smash every coming together of capital with or without monopolistic effect. But if this is a desirable thing to do, why did Mr. Bryan in 1908 favor a federal enactment which would have admitted to interstate commerce combinations which controlled no more than 50 per cent of a given industry? And if the anti-trust law properly interpreted—as say by the prevailing opinion in the northern securities case—is sufficient, why has Mr. Bryan been advocating substitute legislation in regulation of capitalistic combinations?"

We will pass over the first criticism—it is a matter of opinion, but when it cites the order of dissolution as a refutation of the charge that the court is building "a bulwark around the predatory corporations" it overlooks the fact that the order of dissolution can be avoided by reorganization, and that the corporation has six months (during which it can continue to violate the law with impunity) in which to reorganize. But the insertion of the word "unreasonable" virtually repeals the criminal clause of the

statute and cripples it as a civil remedy. But how can it be so uninformed as to think that the remedy advocated by Mr. Bryan would enlarge the powers of the trusts? The plan outlined in the democratic platform would bring corporations under supervision of United States laws when they control 25 per cent of the total product and prohibit control of more than 50 per cent. If experience showed that a fifty per cent control would enable a corporation to control the market the percentage could be lowered, but some corporations today control as high as 75 or 80 per cent of output in certain lines and are not disturbed.

But the last sentence is the most unreasonable. After referring to additional legislation it asks why Mr. Bryan favors additional legislation if this law is sufficient as formerly construed. Mr. Bryan does not regard it as sufficient. He declares it to be INSUFFICIENT, but he is opposed to taking any backward step. He would keep the present law, imperfect as it is, until he can get something better. Anything unreasonable about that?

IN VIRGINIA.

It is reported that some of the democratic politicians of Virginia are trying to arrange things so that republicans can vote at the primaries. Why should republicans help select a democratic candidate for the senate? If a democratic candidate for senator in Virginia seeks republican votes in the primary it looks like he was scared—and he does not deserve democratic votes.

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